

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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Jon D. Gruber, individually and on behalf of  
all others similarly situated,

Plaintiffs,

Case No. 16-cv-9727-WHP

v.

Ryan R. Gilbertson, Michael L. Reger,  
Gabriel G. Claypool, Craig M. McKenzie,  
Timothy R. Brady, Terry H. Rust, Paul M.  
Cownie, David J. Fellon, Gary L. Alvord, &  
James L. Thornton,

Defendants.

**JOINT NOTICE OF MOTION AND  
MOTION TO DISMISS THE SECOND  
AMENDED COMPLAINT FOR  
FAILURE TO STATE A CLAIM  
UNDER FEDERAL RULE OF CIVIL  
PROCEDURE 12(b)(6)**

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**NOTICE OF MOTION**

PLEASE TAKE NOTICE that a hearing will be held on October 20, 2017 at 11:30 a.m. before the Honorable William H. Pauley III, in courtroom 20B of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007, on the Motion to Dismiss Plaintiff's Second Amended Complaint submitted by Defendants Ryan R. Gilbertson, Michael L. Reger, Gabriel G. Claypool, Craig M. McKenzie, Timothy R. Brady, Terry H. Rust, Paul M. Cownie, David J. Fellon, Gary L. Alvord, and James L. Thornton.

**MOTION**

Pursuant to Rule 12 of the Federal Rules of Civil Procedure, Defendants hereby move the Court for an order dismissing Plaintiff's Second Amended Complaint in the above-captioned action on the ground that the Second Amended Complaint fails to state a claim for which this Court may grant relief and fails to plead fraud with particularity. The Motion is based upon all of the

pleadings, files, records, and proceedings herein, the memorandum of law and exhibits in support of the Motion, and the arguments of counsel to be made at the hearing.

Dated: August 15, 2017

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